?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 08.10.2018

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

+C.M.A.(MD)No.1237 of 2017

#The Branch Manager,
The Oriental Insurance Company Limited,
Dharmapurai ... Appellant / 2nd Respondent
Vs.
$1.S.Vijaya
2.S.Sathishkumar
3.Minor S.Karthick
4.Ilanjiyam ... Respondents 1 to 4 / Petitioners 1 to 4
5.Mathiazhagan ... 5th Respondent / 1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 20.02.2013 passed in M.C.O.P.No.77 of 2009 on the file of the Motor Accident Claims Tribunal cum II Additional District Judge, Thiruchirappalli.

!For Appellant : Mr.C.Jawahar Ravindran
^For R1 to R4 : Mr.N.Sudhagar Nagaraj
For R5 : No Appearance

:JUDGMENT
This Civil Miscellaneous Appeal has been filed to set aside the award dated 20.02.2013, passed in M.C.O.P.No.77 of 2009 on the file of the Motor Accident Claims Tribunal cum II Additional District Judge, Thiruchirappalli.

2.The appellant / Insurance Company is the second respondent in M.C.O.P.No.77 of 2009. The respondents 1 to 4 are the claimants in the said claim petition, claiming a sum of Rs.8,00,000/~ (Rupees Eight Lakhs Only) as compensation for the death of one Selvaraj, in the accident that took place on 25.01.2008.

3.According to the respondents 1 to 4, the lorry belonging to the 5th respondent insured with the appellant, was parked in the middle of the road without any indicator. The deceased, who was riding motorcycle along with his wife / first respondent herein in pillion, could not see the parked vehicle due to lack of indicator and flash light of the opposite vehicle and has dashed against the parked lorry. The accident occurred only due to the negligent act of the driver of the lorry, belonging to the fifth respondent in parking the vehicle in the middle of the road without any indicator. The deceased was doing business and was earning a sum of Rs.3,000/~ (Rupees Three Thousand Only) per month. The respondents 1 to 4 are the legal heirs and dependents of the deceased. They have filed claim petition under Section

163(A) of the Motor Vehicles Act, claiming a sum of Rs.8,00,000/~ as compensation.

4.The fifth respondent herein remained ex~parte before the Tribunal.

5.The appellant has filed counter statement before the Tribunal and contended that the driver of the lorry, belonging to the 5th respondent has parked the vehicle in the extreme left side of the road with indicator, the deceased has driven his motorcycle in rash and negligent manner and dashed against the parked vehicle and caused accident. The First Information Report was lodged only against the deceased and hence, the appellant is not liable to pay any compensation.

6.Before the Tribunal, the first respondent herein examined herself as P.W.1 and 2 documents were marked as Exs.P.1 and P.2. One Ravichakravarthy and Jeevanandham were examined as R.W.1 and R.W.2 and three documents were marked as Exs.R1 to R3.

7.The Tribunal considering the pleadings, both oral and documentary evidence let in by both the parties, held that the accident occurred only due to the negligence on the part of the driver of the 5th respondent and the appellant is liable to pay compensation, as insurer of the vehicle and awarded total sum of Rs.3,95,000/~ (Rupees Three Lakhs Ninety Five Thousand Only) to the respondents 1 to 4.

8.Aggrieved over the said award, the appellant / Insurance Company has come out with the present appeal.

9.The learned counsel appearing for the appellant contended that the First Information Report was lodged only against the deceased. The Tribunal on erroneous reason rejected the First Information Report and held that the accident occurred only due to the negligence on the part of the driver of the 5th respondent. The Tribunal has not considered the evidence let in by the appellant. In any event, the Tribunal ought to have fixed the contributory negligence on the part of the deceased.

10.Per contra, the learned counsel appearing for the respondents 1 to 4 contended that the respondents 1 to 4 have filed claim petition under Section 163(A) of the Motor Vehicles Act and there is no obligation on the part of the respondents 1 to 4 to prove the negligence on the part of the driver of the 5th respondent.

11.Heard the learned counsel appearing for the appellant and the respondents 1 to 4 and perused the materials available on record.

12.In the present case, the first respondent, who was an eyewitness examined herself as P.W.1, deposed that the accident occurred only due to the negligence on the part of the driver of the 5th respondent in parking the lorry without any indicator. The Tribunal has appreciated this fact and fixed the negligence on the part of the driver of the 5th respondent. The said finding is based on evidence and the amount awarded by the Tribunal is just compensation.

13.The main contention of the learned counsel appearing for the appellant is that the First Information Report was lodged only against the deceased and as per the First Information Report, the accident occurred only due to rash and negligent driving by the deceased. This contention is not acceptable. The First Information Report has been lodged by the driver of the 5th respondent, who is an interested person. The deceased sustained serious injury and was taken to hospital. The first respondent / wife of the deceased, who was travelling with the deceased in pillion, did not lodge any complaint as she accompanied her husband to hospital. There is nothing on record to show that the police enquired the first respondent or any other independent witnesses to ascertain whose negligence caused the accident. The Tribunal has accepted the evidence of the first respondent / wife of the deceased deposed on oath that the First Information Report has to be considered by Courts in consonance with the evidence on record to decide the negligence.

14.The contention of the learned counsel appearing for the appellant that the first respondent as P.W.1 has admitted that she could see the lorry from the headlight of the two wheeler, in which, she and the deceased travelled and there is no evidence to show that the vehicle with flash light was coming on the opposite direction, is contrary to the evidence of P.W.1, as P.W.1 has stated in her cross~examination that she could not see the parked lorry due to flash light of the vehicle coming on the opposite direction. The evidence of P.W.1 in its entirety was considered by the Tribunal and the Tribunal has held that the accident occurred only due to the negligence on the part of the driver of the 5th respondent.

15.The Tribunal has considered the judgment rendered earlier on this aspect and given cogent and valid reason to hold that the accident was due to the negligent act on the part of the driver of the 5th respondent. Therefore, there is no reason, warranting interference by this Court.

16.In the result, this Civil Miscellaneous Appeal is dismissed directing the appellant to deposit the entire award amount to the credit of M.C.O.P.No.77 of 2009 on the file of the Motor Accident Claims Tribunal cum II Additional District Judge, Thiruchirappalli, less the amount already deposited, if any, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimants are permitted to withdraw the said award amount, as apportioned by the Tribunal, less the amount, if any, already withdrawn, by making necessary application before the Tribunal. No costs.

To
1.The Motor Accident Claims Tribunal,
II Additional District Judge, Thiruchirappalli.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,

Madurai.